Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	File No.: EB-01-DV-044
	)	NAL/Acct. No. 200332800004
Pilgrim Communications, Inc.	)	FRN 0006-1472-19
Licensee, KSKE(AM)	)	
Vail, Colorado	)	

MEMORANDUM OPINION AND ORDER

Adopted: August 26, 2005 **Released: September 2, 2005**

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* ("*Order*"), we deny the petition for reconsideration ("petition") filed by Pilgrim Communications, Inc. ("Pilgrim"), licensee of Station KSKE(AM), Vail, Colorado.[1] Pilgrim seeks reconsideration of the *Forfeiture Order*[2] in which the Chief, Enforcement Bureau ("Bureau"), found it liable for a monetary forfeiture in the amount of $11,000 for willful and repeated violation of Section 73.1125(a) of the Commission's Rules ("Rules") and willful violation of Sections 73.1560(a) and 73.1745(a) of the Rules.[3]

II. BACKGROUND

2. On November 20, 2002, the Commission's Denver, Colorado Field Office ("Denver Office") issued a *Notice of Apparent Liability for Forfeiture* ("*NAL*")[4] in the amount of $11,000 to Pilgrim. The *NAL* was based on findings by the Denver Office that Pilgrim violated Section 73.1125(a) of the Rules by failing to maintain the requisite main studio presence at Station KSKE. The Denver Office also found that on May 9, 2001, Pilgrim did not reduce Station KSKE's power at sunset to the level required by the station authorization and operated with power exceeding KSKE's authorized nighttime power level.

3. Pilgrim responded to the *NAL* on January 21, 2003 and supplemented its response on February 20, 2003. On May 19, 2004, the Bureau issued the subject *Forfeiture Order* in which it upheld the *NAL*. On June 18, 2004, Pilgrim filed a petition for reconsideration of the *Forfeiture Order*. In its petition, Pilgrim challenges the Bureau's finding in the *Forfeiture Order* that it failed to maintain a main studio for Station KSKE. Further, Pilgrim challenges and requests reconsideration of the Bureau's finding that neither cancellation nor reduction of the forfeiture is warranted. In support of its request, Pilgrim notes *PJB Communications of Virginia, Inc.*,[5] and cites to language therein stating that "in some cases, other financial

[1] Pilgrim filed a consolidated petition for reconsideration to encompass the instant *Forfeiture Order* and the *Forfeiture Order* issued to it for violations at Station KWYD(AM). *See Pilgrim Communications, Inc.,* 19 FCC Rcd 8881 (Enf. Bur. 2004). We address the arguments raised regarding KWYD in a separate *Memorandum Opinion and Order.*

[2] *Pilgrim Communications, Inc.,* 19 FCC Rcd 8877 (Enf. Bur. 2004).

[3] 47 C.F.R. §§ 73.1125(a), 73.1560(a), and 73.1745(a).

[4] *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332800004 (Enf. Bur., Denver Office, November 20, 2002).

[5] *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

indicators such as net losses, may be relevant.[6] Pilgrim notes that it stopped keeping separate accounting records for KSKE since it was showing no income and combined its expenses into the records of KLMO. Pilgrim asserts that the Bureau failed to give adequate weight to this information. Pilgrim also cites *Renaissance Radio, Inc.,*[7] in further support of its request for cancellation or reduction of the forfeiture.

III. DISCUSSION

4. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934 as amended ("Act"), [8] Section 1.80 of the Rules,[9] and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.[10] In examining Pilgrim's petition, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and any other such matters as justice may require.[11]

5. Pilgrim seeks reversal of the Bureau's conclusion that it had no main studio for Station KSKE claiming in a declaration by Ron Crider, Director of Engineering, that it "maintained a fully operational main studio for the station at all times." Although Pilgrim claims to have had a main studio, we note that when the investigating agent attempted to inspect Station KSKE, he found what appeared to be storage space at the address of KSKE's main studio. The agent found no indication that there was a studio at the location. Employees at adjacent businesses were not aware that KSKE supposedly had a main studio at that location. The telephone number listed in the phone book for Station KSKE had been disconnected and no alternative phone number could be obtained from directory assistance. Moreover, during a telephone conversation with Pilgrim corporate office staff, the agent was informed no Pilgrim personnel were in the Vail, Colorado area for Station KSKE. We believe these facts support the conclusion that there was no main studio located at the address indicated as Station KSKE's main studio, and contradict Crider's declaration. However, we need not reach the question as to whether there was actually a main studio, since the violation of Section 73.1125(a) was premised on the absence of full-time staff and management personnel at Station KSKE during normal business hours.[12] In response to paragraph 14 of the *Forfeiture Order*, Pilgrim now states that "there is a full-time managerial presence at the KSKE main studio," however, it failed to establish in either its response to the *NAL* or petition for reconsideration that there was a management level person employed at the station at the time of the inspection. Accordingly, there is no basis for reversal of the ultimate finding in the *Forfeiture Order* that Pilgrim violated Section 73.1125(a).

6. Regarding Pilgrim's inability to pay claim, the general rule of *PJB* is that a licensee's

[6] *Id*. at 2089.

[7] 19 FCC Rcd 10494 (Enf. Bur., 2004).

[8] 47 U.S.C. § 503(b).

[9] 47 C.F.R. § 1.80.

[10] 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

[11] 47 U.S.C. § 503(b)(2)(D).

[12] *Jones Eastern of the Outer Banks, Inc.,* 6 FCC 2d 3615, 3616 and n. 2, clarified 7 FCC Rcd 6800 (1992).

gross revenues are the best indicator of its ability to pay a forfeiture.[13] The Bureau followed that rule in the *Forfeiture Order* when it averaged Pilgrim's gross revenues over a three-year period and compared that amount to the forfeiture amount. As a result, the Bureau determined that the percentage of gross revenues represented by the forfeiture amount was within a range generally considered to be payable.[14] While it is true that *PJB* recognizes that in some cases other financial indicators such as net losses may be relevant, it is not generally the case that net losses alone will mandate cancellation or reduction of a forfeiture. As a matter of fact, *PJB* goes on to point out that if gross revenues are sufficiently great, the mere fact that a business is operating at a loss does not itself mean that it can not afford to pay a forfeiture.[15] In *Renaissance*, the case cited by Pilgrim, the Bureau considered *Renaissance's* financial statements as well as its bankruptcy filing in determining that *Renaissance* could not pay the forfeiture. Here, we do not have such a severe financial situation that it has resulted in a bankruptcy filing. Moreover, Pilgrim has significant gross revenues in all three of the years that its financial documentation was reviewed and, when depreciation is added back, net income in two of those years. Moreover, even though Pilgrim stopped accounting for KSKE separately and combined its expenses into the accounting records of KLMO, that fact has no impact upon the Bureau's decision regarding Pilgrim's ability to pay the forfeiture because the Bureau evaluated the financial records of Pilgrim Communications, Inc. That review would have included the financial condition of all of the holdings of Pilgrim Communications, Inc., including that of Stations KLMO and KSKE.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act[16] and Section 1.106 of the Rules,[17] Pilgrim Communications, Inc.'s petition for reconsideration of the May 19, 2004 *Forfeiture Order* **IS** hereby **DENIED.**

8. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,[18] Pilgrim Communications, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eleven thousand dollars ($11,000) for willful and repeated violation of Section 73.1125(a) of the Rules and willful violation of Sections 73.1560(a) and 73.1745(a) of the Rules.

9. Payment of the forfeiture shall be made in the manner provided in Section 1.80 of the Rules within 30 days of the release of the *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.[19] Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No.

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[13] *PJB* at 2089.

[14] *Id.* at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation,* 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.,* 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

[15] *Id.* at 2089.

[16] 47 U.S.C. § 405.

[17] 47 C.F.R. § 1.106.

[18] 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

[19] *See* 47 U.S.C. § 504(a).

referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

10. **IT IS FURTHER ORDERED** that this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Pilgrim's counsel, Christopher L. Robbins, Esq., Wiley, Rein, and Fielding LLP, 1776 K Street, NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief, Enforcement Bureau